

The Replacement Vehicle Tax is applicable in transactions where an insured receives a check from his insurance company in settlement of a total loss claim and endorses that check over to a dealer, provided that the dealer is able to document in his books and records that the check was, in fact, endorsed over to the dealer and the gross proceeds were applied entirely to the purchase of a new replacement vehicle. See 625 ILCS 5/3-2001 et seq.

June 1, 2005

Dear Xxxxx:

This letter is in response to your letter dated February 7, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I write on behalf of the Association in Illinois regarding recent audits of car dealers involving the now-repealed replacement vehicle tax (RVT) and its related tax exemptions. I believe the Department and its field auditors have created barriers which unlawfully restrict the tax exemption and are improperly auditing the dealers.

As you know, up until July 1, 2003, Illinois law provided that replacement vehicles were subject to a \$200 Replacement Vehicle Tax (RVT) but that the portion of the purchase price subject to the RVT was not subject to Illinois sales tax (i.e. the Retailers Use and Occupation taxes (ROT/UT)).

In dealership audits, the Department is taking the position that the RVT tax exemption is not available when the insurance company check is payable only to the insured, even where the insured simply endorses the check over to the dealer. The Department has stated that the tax exemption applies only when the check was made payable to the dealer or to the dealer and insured as co-payees.

The attached memorandum reveals that the RVT and related tax exemption statutes and administrative rules were devoid of any requirement that the check be made payable only to the dealer or the dealer and insured. Not only is the payable requirement not mentioned in the available RVT Informational Bulletins, it isn't even on

the RVT-7 form itself. It appears that this extraordinary limitation was mentioned only in "letter rulings" and buried in a 66 page 'Guide' to using Form ST-556, neither of which have the force or effect of a law or rule for the dealer body.

It appears the Department is unilaterally imposing the requirement regarding how the checks are to be written and does not have explicit or implicit authority from the Illinois Legislature or its official agency, the Joint Committee on Administrative Rules (JCAR).

In conclusion, this Association respectfully requests that the Department cease attempting to enforce this requirement against automobile dealers until an explicit statutory or administrative basis for enforcing such a requirement is found. In addition, the IADA requests to meet with the appropriate Department personnel to further discuss this matter.

If you have any questions or concerns, please do not hesitate to call.

DEPARTMENT'S RESPONSE:

Section 3-2001 of the Replacement Vehicle Tax ("RVT"), 625 ILCS 5/3-2001 et seq., imposes a tax of \$200 on the "purchase of any passenger car ... purchased in Illinois by or on behalf of an insurance company to replace a passenger car of an insured person in settlement of a total loss claim."

The RVT applies to that portion of the purchase price of the replacement vehicle paid by the insurance company in settlement of a total loss claim. In order to support imposition of the \$200 Replacement Vehicle Tax, a taxpayer is required to maintain books and records documenting the purchase of a replacement vehicle with the amounts provided by the insurance company in settlement of the total loss claim. Generally speaking, the clearest documentation of this is a check made out to the dealer or to the dealer and the insured by an insurance company. Generally, when an insurance company issues a check to an insured, we do not believe that sufficient data exists to confirm the elements of a valid replacement vehicle transaction.

However, at our meeting of February 28, 2005, you indicated that an insured who has received a check from his insurer in settlement of his total loss claim will sometimes endorse that check over to the dealer from whom he makes the purchase of a replacement vehicle. After reviewing the materials provided at that meeting, we agree that under these circumstances, the Replacement Vehicle Tax is applicable. We wish to stress, however, that for these transactions, the dealer must maintain clear documentation in his books and records to show that the check was in fact endorsed over to the dealer and the gross proceeds were applied entirely to the purchase of a new replacement vehicle.

I hope that this information is helpful. Please do not hesitate to contact us if you have any additional questions regarding this letter.

Very truly yours,

Jerilynn T. Gorden
Deputy General Counsel – Sales and Excise Taxes

JTG:msk